

NOTICE OF INTENT

Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.1305 and 1307, and the Solid Waste regulations, LAC 33:VII.305 (Log #OS034).

This proposed rule clarifies the Office of the Secretary and the Solid Waste regulations to reflect the department's intent and will adopt by reference the Risk Evaluation/Corrective Action Program (RECAP) document that is being revised as part of this rulemaking package. The RECAP revisions will provide clarification and corrections to text, tables, and figures of the RECAP document. Clarifications of text will enhance the reader's understanding of the content of the document. Correction to errors in the document and movement of text will improve the RECAP document readability and help the regulated community understand the document. Some of these changes include: revisions to the Screening Option to determine if an area of concern requires further evaluation under a management option; upgrading the SIC codes to newly adopted NAICS codes; corrections to the RECAP standards tables; allowance of the SPLP method for the soil level protective of groundwater derivation for Management Options 1, 2, and 3; site investigation requirements expanded to provide more guidance to submitters; new RECAP submittal forms to enable both submitters and Department reviewers to find needed information more easily; and increased flexibility that may be granted by the Department of the submittal requirements for each screening or management option. The RECAP revisions will help ensure that a consistent method based on sound scientific principles is used and will continue to serve as a standard tool to assess impacts to soil, groundwater, surface water, and air. The basis and rationale for this proposed rule are to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation.

This proposed rule meets an exception listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 24, 2000, at 1:30 p.m. in the Trotter Building, Second Floor, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS034. Such comments must be received no later than January 31, 2000, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS034.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

Title 33
Environmental Quality
Part I. Office of the Secretary
Subpart 1. Departmental Administrative Procedures

Chapter 13. Risk Evaluation/Corrective Action Program

§1305. Applicability

* * *

[See Prior Text In A - A.3]

B. This Chapter shall not apply to activities conducted in accordance with corrective action plans, closure plans, or closure standards that were approved by the department prior to ~~the effective date of this rule~~ December 20, 1998, except when modification of such a plan is deemed by the department to be necessary to protect human health or the environment or when modification of such a plan is otherwise allowed or required by the department in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:**.

§1307. Adoption by Reference

The document entitled, “Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP)” dated ~~October 20, 1998~~ [FINAL PROMULGATION DATE] is hereby adopted and incorporated herein in its entirety. The RECAP document is available for purchase or inspection from 8 a.m. until 4:30 p.m., Monday through Friday from the Louisiana Department of Environmental Quality, ~~Office of Legal Affairs and Enforcement, Investigations and Regulation Development~~ Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 82282-82178 (7290 Bluebonnet Boulevard, 4th Floor), Baton Rouge, LA 70884-~~2282-2178~~. For RECAP document availability at other locations, contact the department’s Regulation Development Section at (225) 765-0399. The RECAP document may also be reviewed on the Internet at <http://www.deq.state.la.us/technology/recap/index.htm>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:2244 (December 1998), amended by the Office of Environmental Assistance, Environmental Planning Division, LR 26:**.

Title 33
ENVIRONMENTAL QUALITY
Part VII.Solid Waste

Chapter 3. Scope and Mandatory Provisions of the Program

§305. Facilities Not Subject to the Permitting Requirements or Processing or Disposal Standards of These Regulations

The following facilities, that are operated in an environmentally sound manner are not subject to the permitting requirements or processing or disposal standards of these regulations:

* * *

[See Prior Text In A – B]

C. facilities which process or reuse on-site-generated, nonhazardous, petroleum-contaminated media and debris from underground storage tank corrective action, provided such ~~treatment~~processing or reuse is completed in less than 12 months and authorized by the Underground Storage Tank ~~Division~~Regulations.

* * *

[See Prior Text In D – J]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assistance, Environmental Planning Division, LR 26:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: OS034

Person

Preparing

Statement: John Halk

Phone: 225-765-0487

Dept.: Environmental Quality

Office: Environmental Assessment

Return

Address: P.O. Box 82178

Rule

Title: Risk Evaluation/Corrective Action
Program (RECAP) Revision Package 1
LAC 33:I.1305 and 1307; VII.305; and
RECAP

Baton Rouge, La 70884-2178

Date Rule

Takes Effect: Upon Promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Existing staff and facilities will be used in the implementation of the Risk Evaluation/Corrective Action Program (RECAP) Revision Package rule. No significant costs or savings are anticipated with the promulgation of the RECAP revisions.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No net increase or decrease in revenues is expected with the promulgation of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Implementation of the proposed Risk Evaluation/Corrective Action Program (RECAP) revisions would result in some reduction in the costs of remediating contaminated sites to a protective level when compared to the present RECAP regulation. Clarification of the RECAP Screening Option will enable submitters to more expeditiously address sites. Clarifications, updates, and corrections to text, figures, and tables to the document will benefit the environmental service providers in reducing overall review time and preparation.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is expected that no significant increase in needed environmental services will correspond with the revisions in this rule. Since RECAP is an established rule, competition in the environmental service sectors is positive and energetic because all parties are pursuing remedial actions under the same set of standards. Amendments to RECAP should not impact present competition and employment.

Signature of Agency Head or Designee

LEGISLATIVE FISCAL OFFICER OR DESIGNEE

James H. Brent, Ph. D., Assistant Secretary

Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 10/05/92

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

The Risk Evaluation/Corrective Action Program (RECAP) revisions will provide clarification and corrections to text, tables, and figures of the RECAP document. Clarifications of text enhance the reader's understanding of the content of the document. Correction to errors in the document and movement of text will improve the RECAP document and help the regulated community in understanding of the document. Some of these changes include: revisions to the Screening Option to determine if an area of concern requires further evaluation under a management option; upgrading the SIC codes to newly adopted NAICS codes; corrections to the RECAP standards tables; allowance of the SPLP method for the soil level protective of groundwater derivation for Management Options 1,2, and 3; site investigation requirements expanded to provide more guidance to submitters; new RECAP submittal forms to enable both submitters and Department reviewers to find needed information more easily; and increased flexibility that may be granted by the Department on the submittal requirements for each screening or management option.

The RECAP revisions will help ensure that a consistent method based on sound scientific principles is used and will continue to serve as a standard tool to assess impacts to soil, ground water, surface water, and air.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

Act 1092 (R.S. 30:2272.1 and 2285) of the 1995 Regular Session, known as the Voluntary Investigation and Remedial Action (VIRA) Act, required the Department to promulgate minimum remediation standards to serve as the basis of approving voluntary remedial action plans.

The RECAP revisions will serve to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation.

This rule will ensure that consistent procedures established by promulgation are used throughout the Department for the assessment, remediation, and/or closure of applicable sites in Louisiana.

- C. Compliance with Act II of the 1986 First Extraordinary Session
(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule change will not result in any increase in expenditure of funds.

2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This is not applicable.

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION
PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 99-00	FY 00-01	FY 01-02
PERSONAL SERVICES			
OPERATING EXPENSES			
PROFESSIONAL SERVICES			
OTHER CHARGES			
EQUIPMENT			
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR.	-0-	-0-	-0-
POSITIONS(#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

No significant increase or decrease in costs is anticipated with the promulgation of the RECAP revisions.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 99-00	FY 00-01	FY 01-02
STATE GENERAL FUND			
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED			
FEDERAL FUNDS			
OTHER (Specify)			
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The Agency currently has sufficient funds to implement these revisions.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

Upon promulgation of the RECAP Amendments, the impacts on local government units are anticipated to be the same as the existing RECAP rule.

In later years, tax revenues will likely increase as remedial actions are performed throughout the state and property and sales taxes are collected on previously idled properties that have been brought back into commerce.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

Upon promulgation, no significant impact on sources of funding of the local government units is anticipated as a result of this proposed rule.

In later years, tax revenues will likely increase as remedial actions are performed throughout the state and property and sales taxes are collected on previously idled properties.

Any cost savings realized by local government units in addressing their sites under RECAP would, of course, have a positive increase in their sources of funding.

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 99-00	FY 00-01	FY 01-02
STATE GENERAL FUND			
AGENCY SELF-GENERATED			
RESTRICTED FUNDS*			
FEDERAL FUNDS			
<u>LOCAL FUNDS</u>			
<u>TOTAL</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No significant increase or decrease in revenues are expected with promulgation of this proposed rule.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Implementation of the proposed Risk Evaluation/Corrective Action Program (RECAP) Revisions rule will affect all submitters of corrective action plans to the Department. The affected groups will include solid waste facilities, hazardous waste facilities, inactive and/or abandoned sites, underground storage tank sites, impacted residential, commercial, and industrial real estate, environmental remediation/engineering, and consulting firms.

Most of the changes made in RECAP by the proposed RECAP Revisions are clarifications in text; redundancies in text that have been omitted, and text that has been rearranged for clarification purposes. These changes will improve the document overall and serve to reduce time spent by the submitter for interpretation. Forms which will be new for the document are the RECAP Submittal Form, the MO-2 Site-Specific Data Summary Form, and the MO-2 Chemical –Specific Data Summary Form. These forms will allow the Department to more easily find data in the submittals, which will aide in document review and turn-around.

Many changes proposed in the RECAP Revisions will reduce the overall documentation and workload burden of the submitter. Under the Screening Option, the submitter may be able to include sites where the impacted area is greater than 0.5 acres, if all other criteria for the Option are met. The Synthetic Precipitation Leaching Procedure (SPLP) test may now be used under all Options to evaluate the soil to groundwater pathway. Additional guidance on its use has been given in the Appendices. Flexibility in the submittal requirements for the RECAP Screening Option and Management Option 1,2,and 3 may be granted by the Department, which will serve to reduce the workload of the submitters. Site investigation requirements have been expanded to provide submitters with more guidance so that proper investigations are submitted with fewer deficiencies to the Department. This will serve to reduce time and costs associated with RECAP investigations.

Updated toxicity values, North American Industrial Classification Codes, and clarification on identification of the indicator compounds and Total Petroleum Hydrocarbon (TPH) fractions,

and added physical/chemical properties for the TPH-G, D, and O, all serve to improve the RECAP document and reduce the consultants' review times.

- B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Groups such as environmental contractors and consultants should realize a positive economic benefit from this rule. Clarification and correction of the document should result in submittals that will require less Department review time, fewer private consulting fees, and quicker turn-around.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The rule, an amendment to the RECAP regulation, will have no negative impact on competition and employment within the state. Similar expectations with respect to competition and employment in the public and private sectors are anticipated. Jobs are expected to be generated in the industrial and environmental service sectors as facilities seek to comply with the rule. Growth will occur in the private sector as remedial actions are completed on sites and those sites returned to active use. An expected increase in the volume of site investigations, risk evaluations, and site monitoring done under the proposed rule will have a corresponding increase in the employment of environmental product and service firms. The number of States that have established risk-based corrective action programs combined with voluntary clean up programs (such as Texas) is growing and becoming a national trend. If Louisiana promulgates this rule and environmental service providers become experienced in working with this rule, the service providers' prospects for employment outside the state are better because they will have gained the knowledge necessary to compete with other providers for that work. Decreased remedial costs may also benefit Louisiana businesses competing with other states by freeing capital and resources for reinvestment and facility improvements.